

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1749

Citations Affected: IC 2-5-23-8; IC 12-15-35-28; IC 27-8-10.

Synopsis: Comprehensive health insurance. Conference committee report for EHB 1749. Amends the comprehensive health insurance association (ICHIA) law concerning board membership, premium rates, reimbursement rates, pharmacy and chronic disease management programs, prescription drug coverage, eligibility, termination of coverage, and assessments. Requires ICHIA and the office of Medicaid policy and planning to consider the development of payment programs related to ICHIA and Medicaid coverage and provides for provider reimbursement, assessment determinations, and distribution of net gains following implementation of a payment program. Requires the office of Medicaid policy and planning and ICHIA to cooperatively investigate methods to decrease ICHIA hemophilia costs and report to the legislative council. Makes conforming and technical amendments. **(This conference committee report: Removes a provision specifying requirements that must be contained in another state's law concerning association group accident and sickness insurance policies issued in the other state and covering an Indiana resident. Changes the residency requirement for ICHIA eligibility from 6 months to 12 months. Adds two members to the ICHIA board. Requires the ICHIA board to obtain an actuarial consultation to develop an equitable assessment methodology. Requires ICHIA to set premium rates based on an insured's family income. Removes a provision limiting the assessment amount that may be taken in tax credits. Amends a provision limiting provider reimbursement to the Medicare rate plus 10%. Removes a provision applying annual and lifetime maximums to ICHIA reimbursement. Removes a provision adjusting out of pocket expenses. Maintains the preexisting limitation provision at 3 months. Provides for provider reimbursement, assessment determinations, and distribution of net gains following implementation of a payment program. Specifies an assessment methodology for a certain period. Requires the office of Medicaid policy and planning and ICHIA to cooperatively investigate methods to decrease ICHIA hemophilia costs and report to the legislative council. Makes technical changes.)**

Effective: Upon passage; July 1, 2003.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1749 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 2-5-23-8 IS AMENDED TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2003]: Sec. 8. Beginning May 1, 1997, the
- 4 health policy advisory committee is established. At the request of the
- 5 chairman, the health policy advisory committee shall provide
- 6 information and otherwise assist the commission to perform the duties
- 7 of the commission under this chapter. The health policy advisory
- 8 committee members are ex officio and may not vote. The health policy
- 9 advisory committee members shall be appointed from the general
- 10 public and must include one (1) individual who represents each of the
- 11 following:
- 12 (1) The interests of public hospitals.
- 13 (2) The interests of community mental health centers.
- 14 (3) The interests of community health centers.
- 15 (4) The interests of the long term care industry.
- 16 (5) The interests of health care professionals licensed under IC 25,
- 17 but not licensed under IC 25-22.5.
- 18 (6) The interests of rural hospitals. An individual appointed under
- 19 this subdivision must be licensed under IC 25-22.5.

(7) The interests of health maintenance organizations (as defined in IC 27-13-1-19).

(8) The interests of for-profit health care facilities (as defined in ~~IC 27-8-10-1(1)~~; **IC 27-8-10-1**).

(9) A statewide consumer organization.

(10) A statewide senior citizen organization.

(11) A statewide organization representing people with disabilities.

(12) Organized labor.

(13) The interests of businesses that purchase health insurance policies.

(14) The interests of businesses that provide employee welfare benefit plans (as defined in 29 U.S.C. 1002) that are self-funded.

(15) A minority community.

(16) The uninsured. An individual appointed under this subdivision must be and must have been chronically uninsured.

(17) An individual who is not associated with any organization, business, or profession represented in this subsection other than as a consumer.

SECTION 2. IC 12-15-35-28, AS AMENDED BY P.L.107-2002, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 28. (a) The board has the following duties:

(1) The adoption of rules to carry out this chapter, in accordance with the provisions of IC 4-22-2 and subject to any office approval that is required by the federal Omnibus Budget Reconciliation Act of 1990 under Public Law 101-508 and its implementing regulations.

(2) The implementation of a Medicaid retrospective and prospective DUR program as outlined in this chapter, including the approval of software programs to be used by the pharmacist for prospective DUR and recommendations concerning the provisions of the contractual agreement between the state and any other entity that will be processing and reviewing Medicaid drug claims and profiles for the DUR program under this chapter.

(3) The development and application of the predetermined criteria and standards for appropriate prescribing to be used in retrospective and prospective DUR to ensure that such criteria and standards for appropriate prescribing are based on the compendia and developed with professional input with provisions for timely revisions and assessments as necessary.

(4) The development, selection, application, and assessment of interventions for physicians, pharmacists, and patients that are educational and not punitive in nature.

(5) The publication of an annual report that must be subject to public comment before issuance to the federal Department of Health and Human Services and to the Indiana legislative council by December 1 of each year.

(6) The development of a working agreement for the board to clarify the areas of responsibility with related boards or agencies, including the following:

(A) The Indiana board of pharmacy.

(B) The medical licensing board of Indiana.

- 1 (C) The SURS staff.
- 2 (7) The establishment of a grievance and appeals process for
- 3 physicians or pharmacists under this chapter.
- 4 (8) The publication and dissemination of educational information
- 5 to physicians and pharmacists regarding the board and the DUR
- 6 program, including information on the following:
- 7 (A) Identifying and reducing the frequency of patterns of fraud,
- 8 abuse, gross overuse, or inappropriate or medically unnecessary
- 9 care among physicians, pharmacists, and recipients.
- 10 (B) Potential or actual severe or adverse reactions to drugs.
- 11 (C) Therapeutic appropriateness.
- 12 (D) Overutilization or underutilization.
- 13 (E) Appropriate use of generic drugs.
- 14 (F) Therapeutic duplication.
- 15 (G) Drug-disease contraindications.
- 16 (H) Drug-drug interactions.
- 17 (I) Incorrect drug dosage and duration of drug treatment.
- 18 (J) Drug allergy interactions.
- 19 (K) Clinical abuse and misuse.
- 20 (9) The adoption and implementation of procedures designed to
- 21 ensure the confidentiality of any information collected, stored,
- 22 retrieved, assessed, or analyzed by the board, staff to the board, or
- 23 contractors to the DUR program that identifies individual
- 24 physicians, pharmacists, or recipients.
- 25 (10) The implementation of additional drug utilization review with
- 26 respect to drugs dispensed to residents of nursing facilities shall
- 27 not be required if the nursing facility is in compliance with the
- 28 drug regimen procedures under 410 IAC 16.2-3-8 and 42 CFR
- 29 483.60.
- 30 (11) The research, development, and approval of a preferred drug
- 31 list for:
- 32 (A) Medicaid's fee for service program;
- 33 (B) Medicaid's primary care case management program; and
- 34 (C) the primary care case management component of the
- 35 children's health insurance program under IC 12-17.6;
- 36 in consultation with the therapeutics committee.
- 37 (12) The approval of the review and maintenance of the preferred
- 38 drug list at least two (2) times per year.
- 39 (13) The preparation and submission of a report concerning the
- 40 preferred drug list at least two (2) times per year to the select joint
- 41 commission on Medicaid oversight established by IC 2-5-26-3.
- 42 (14) The collection of data reflecting prescribing patterns related
- 43 to treatment of children diagnosed with attention deficit disorder
- 44 or attention deficit hyperactivity disorder.
- 45 **(15) Advising the Indiana comprehensive health insurance**
- 46 **association established by IC 27-8-10-2.1 concerning**
- 47 **implementation of chronic disease management and**
- 48 **pharmaceutical management programs under IC 27-8-10-3.5.**
- 49 (b) The board shall use the clinical expertise of the therapeutics
- 50 committee in developing a preferred drug list. The board shall also
- 51 consider expert testimony in the development of a preferred drug list.

(c) In researching and developing a preferred drug list under subsection (a)(11), the board shall do the following:

- (1) Use literature abstracting technology.
- (2) Use commonly accepted guidance principles of disease management.
- (3) Develop therapeutic classifications for the preferred drug list.
- (4) Give primary consideration to the clinical efficacy or appropriateness of a particular drug in treating a specific medical condition.
- (5) Include in any cost effectiveness considerations the cost implications of other components of the state's Medicaid program and other state funded programs.

(d) Prior authorization is required for coverage under a program described in subsection (a)(11) of a drug that is not included on the preferred drug list.

(e) The board shall determine whether to include a single source covered outpatient drug that is newly approved by the federal Food and Drug Administration on the preferred drug list not later than sixty (60) days after the date of the drug's approval. However, if the board determines that there is inadequate information about the drug available to the board to make a determination, the board may have an additional sixty (60) days to make a determination from the date that the board receives adequate information to perform the board's review. Prior authorization may not be automatically required for a single source drug that is newly approved by the federal Food and Drug Administration and that is:

- (1) in a therapeutic classification:
 - (A) that has not been reviewed by the board; and
 - (B) for which prior authorization is not required; or
- (2) the sole drug in a new therapeutic classification that has not been reviewed by the board.

(f) The board may not exclude a drug from the preferred drug list based solely on price.

(g) The following requirements apply to a preferred drug list developed under subsection (a)(11):

- (1) The office or the board may require prior authorization for a drug that is included on the preferred drug list under the following circumstances:
 - (A) To override a prospective drug utilization review alert.
 - (B) To permit reimbursement for a medically necessary brand name drug that is subject to generic substitution under IC 16-42-22-10.
 - (C) To prevent fraud, abuse, waste, overutilization, or inappropriate utilization.
 - (D) To permit implementation of a disease management program.
 - (E) To implement other initiatives permitted by state or federal law.
- (2) All drugs described in IC 12-15-35.5-3(b) must be included on the preferred drug list.
- (3) The office may add a new single source drug that has been

approved by the federal Food and Drug Administration to the preferred drug list without prior approval from the board.

(4) The board may add a new single source drug that has been approved by the federal Food and Drug Administration to the preferred drug list.

(h) At least two (2) times each year, the board shall provide a report to the select joint commission on Medicaid oversight established by IC 2-5-26-3. The report must contain the following information:

(1) The cost of administering the preferred drug list.

(2) Any increase in Medicaid physician, laboratory, or hospital costs or in other state funded programs as a result of the preferred drug list.

(3) The impact of the preferred drug list on the ability of a Medicaid recipient to obtain prescription drugs.

(4) The number of times prior authorization was requested, and the number of times prior authorization was:

(A) approved; and

(B) disapproved.

(i) The board shall provide the first report required under subsection (h) not later than six (6) months after the board submits an initial preferred drug list to the office.

SECTION 3. IC 27-8-10-1, AS AMENDED BY P.L.1-2001, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Association" means the Indiana comprehensive health insurance association established under section 2.1 of this chapter.

(c) "Association policy" means a policy issued by the association that provides coverage specified in section 3 of this chapter. The term does not include a Medicare supplement policy that is issued under section 9 of this chapter.

(d) "Carrier" means an insurer providing medical, hospital, or surgical expense incurred health insurance policies.

(e) "Church plan" means a plan defined in the federal Employee Retirement Income Security Act of 1974 under 26 U.S.C. 414(e).

(f) "Commissioner" refers to the insurance commissioner.

(g) "Creditable coverage" has the meaning set forth in the federal Health Insurance Portability and Accountability Act of 1996 (26 U.S.C. 9801(c)(1)).

(h) "Eligible expenses" means those charges for health care services and articles provided for in section 3 of this chapter.

(i) **"Federal income poverty level" has the meaning set forth in IC 12-15-2-1.**

(j) "Federally eligible individual" means an individual:

(1) for whom, as of the date on which the individual seeks coverage under this chapter, the aggregate period of creditable coverage is at least eighteen (18) months and whose most recent prior creditable coverage was under a:

(A) group health plan;

(B) governmental plan; or

(C) church plan;

or health insurance coverage in connection with any of these plans;

(2) who is not eligible for coverage under:

(A) a group health plan;

(B) Part A or Part B of Title XVIII of the federal Social Security Act; or

(C) a state plan under Title XIX of the federal Social Security Act (or any successor program);

and does not have other health insurance coverage;

(3) with respect to whom the individual's most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(4) who, if after being offered the option of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (29 U.S.C. 1191b(d)(1)), or under a similar state program, elected such coverage; and

(5) who, if after electing continuation coverage described in subdivision (4), has exhausted continuation coverage under the provision or program.

~~(j)~~ **(k)** "Governmental plan" means a plan as defined under the federal Employee Retirement Income Security Act of 1974 (26 U.S.C. 414(d)) and any plan established or maintained for its employees by the United States government or by any agency or instrumentality of the United States government.

~~(k)~~ **(l)** "Group health plan" means an employee welfare benefit plan (as defined in 29 U.S.C. 1167(1)) to the extent that the plan provides medical care payments to, or on behalf of, employees or their dependents, as defined under the terms of the plan, directly or through insurance, reimbursement, or otherwise.

~~(l)~~ **(m)** "Health care facility" means any institution providing health care services that is licensed in this state, including institutions engaged principally in providing services for health maintenance organizations or for the diagnosis or treatment of human disease, pain, injury, deformity, or physical condition, including a general hospital, special hospital, mental hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate care facility, tuberculosis hospital, chronic disease hospital, maternity hospital, outpatient clinic, home health care agency, bioanalytical laboratory, or central services facility servicing one (1) or more such institutions.

~~(m)~~ **(n)** "Health care institutions" means skilled nursing facilities, home health agencies, and hospitals.

~~(n)~~ **(o)** "Health care provider" means any physician, hospital, pharmacist, or other person who is licensed in Indiana to furnish health care services.

~~(o)~~ **(p)** "Health care services" means any services or products included in the furnishing to any individual of medical care, dental care, or hospitalization, or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any other services or products for the purpose of preventing, alleviating, curing, or healing human illness or injury.

~~(p)~~ **(q)** "Health insurance" means hospital, surgical, and medical

expense incurred policies, nonprofit service plan contracts, health maintenance organizations, limited service health maintenance organizations, and self-insured plans. However, the term "health insurance" does not include short term travel accident policies, accident only policies, fixed indemnity policies, automobile medical payment, or incidental coverage issued with or as a supplement to liability insurance.

~~(q)~~ **(r)** "Insured" means all individuals who are provided qualified comprehensive health insurance coverage under an individual policy, including all dependents and other insured persons, if any.

~~(r)~~ **(s)** "Medicaid" means medical assistance provided by the state under the Medicaid program under IC 12-15.

~~(s)~~ **(t)** "Medical care payment" means amounts paid for:

- (1) the diagnosis, care, mitigation, treatment, or prevention of disease or amounts paid for the purpose of affecting any structure or function of the body;
- (2) transportation primarily for and essential to Medicare services referred to in subdivision (1); and
- (3) insurance covering medical care referred to in subdivisions (1) and (2).

~~(t)~~ **(u)** "Medically necessary" means health care services that the association has determined:

- (1) are recommended by a legally qualified physician;
- (2) are commonly and customarily recognized throughout the physician's profession as appropriate in the treatment of the patient's diagnosed illness; and
- (3) are not primarily for the scholastic education or vocational training of the provider or patient.

~~(u)~~ **(v)** "Medicare" means Title XVIII of the federal Social Security Act (42 U.S.C. 1395 et seq.).

~~(v)~~ **(w)** "Policy" means a contract, policy, or plan of health insurance.

~~(w)~~ **(x)** "Policy year" means a twelve (12) month period during which a policy provides coverage or obligates the carrier to provide health care services.

~~(x)~~ **(y)** "Health maintenance organization" has the meaning set out in IC 27-13-1-19.

~~(y)~~ **(z)** "Resident" means an individual who is:

- (1) legally domiciled in Indiana for at least twelve (12) months before applying for an association policy; or**
- (2) a federally eligible individual and legally domiciled in Indiana.**

(aa) "Self-insurer" means an employer who provides services, payment for, or reimbursement of any part of the cost of health care services other than payment of insurance premiums or subscriber charges to a carrier. However, the term "self-insurer" does not include an employer who is exempt from state insurance regulation by federal law, or an employer who is a political subdivision of the state of Indiana.

~~(z)~~ **(bb)** "Services of a skilled nursing facility" means services that must commence within fourteen (14) days following a confinement of at least three (3) consecutive days in a hospital for the same condition.

~~(aa)~~ **(cc)** "Skilled nursing facility", "home health agency", "hospital", and "home health services" have the meanings assigned to them in 42 U.S.C. 1395x.

~~(bb)~~ **(dd)** "Medicare supplement policy" means an individual policy of accident and sickness insurance that is designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, and surgical expenses of individuals who are eligible for Medicare benefits.

~~(cc)~~ **(ee)** "Limited service health maintenance organization" has the meaning set forth in IC 27-13-34-4.

SECTION 4. IC 27-8-10-2.1, AS AMENDED BY P.L.192-2002(ss), SECTION 169, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2.1. (a) There is established a nonprofit legal entity to be referred to as the Indiana comprehensive health insurance association, which must assure that health insurance is made available throughout the year to each eligible Indiana resident applying to the association for coverage. All carriers, health maintenance organizations, limited service health maintenance organizations, and self-insurers providing health insurance or health care services in Indiana must be members of the association. The association shall operate under a plan of operation established and approved under subsection (c) and shall exercise its powers through a board of directors established under this section.

(b) The board of directors of the association consists of ~~seven (7)~~ **nine (9)** members whose principal residence is in Indiana selected as follows:

(1) ~~Three (3)~~ **Four (4)** members to be appointed by the commissioner from the members of the association, one (1) of which must be a representative of a health maintenance organization.

(2) Two (2) members to be appointed by the commissioner shall be consumers representing policyholders.

(3) Two (2) members shall be the state budget director or designee and the commissioner of the department of insurance or designee.

(4) One (1) member to be appointed by the commissioner must be a representative of health care providers.

The commissioner shall appoint the chairman of the board, and the board shall elect a secretary from its membership. The term of office of each appointed member is three (3) years, subject to eligibility for reappointment. Members of the board who are not state employees may be reimbursed from the association's funds for expenses incurred in attending meetings. The board shall meet at least semiannually, with the first meeting to be held not later than May 15 of each year.

(c) The association shall submit to the commissioner a plan of operation for the association and any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation becomes effective upon approval in writing by the commissioner consistent with the date on which the coverage under this chapter must be made available. The commissioner shall, after notice and hearing, approve the plan of operation if the plan is determined to be suitable to assure the fair,

reasonable, and equitable administration of the association and provides for the sharing of association losses on an equitable, proportionate basis among the member carriers, health maintenance organizations, limited service health maintenance organizations, and self-insurers. If the association fails to submit a suitable plan of operation within one hundred eighty (180) days after the appointment of the board of directors, or at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall adopt rules under IC 4-22-2 necessary or advisable to implement this section. These rules are effective until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner. The plan of operation must:

- (1) establish procedures for the handling and accounting of assets and money of the association;
- (2) establish the amount and method of reimbursing members of the board;
- (3) establish regular times and places for meetings of the board of directors;
- (4) establish procedures for records to be kept of all financial transactions, and for the annual fiscal reporting to the commissioner;
- (5) establish procedures whereby selections for the board of directors will be made and submitted to the commissioner for approval;
- (6) contain additional provisions necessary or proper for the execution of the powers and duties of the association; and
- (7) establish procedures for the periodic advertising of the general availability of the health insurance coverages from the association.

(d) The plan of operation may provide that any of the powers and duties of the association be delegated to a person who will perform functions similar to those of this association. A delegation under this section takes effect only with the approval of both the board of directors and the commissioner. The commissioner may not approve a delegation unless the protections afforded to the insured are substantially equivalent to or greater than those provided under this chapter.

(e) The association has the general powers and authority enumerated by this subsection in accordance with the plan of operation approved by the commissioner under subsection (c). The association has the general powers and authority granted under the laws of Indiana to carriers licensed to transact the kinds of health care services or health insurance described in section 1 of this chapter and also has the specific authority to do the following:

- (1) Enter into contracts as are necessary or proper to carry out this chapter, subject to the approval of the commissioner.
- (2) Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against participating carriers.
- (3) Take legal action necessary to avoid the payment of improper claims against the association or the coverage provided by or through the association.

(4) Establish a medical review committee to determine the reasonably appropriate level and extent of health care services in each instance.

(5) Establish appropriate rates, scales of rates, rate classifications and rating adjustments, such rates not to be unreasonable in relation to the coverage provided and the reasonable operational expenses of the association.

(6) Pool risks among members.

(7) Issue policies of insurance on an indemnity or provision of service basis providing the coverage required by this chapter.

(8) Administer separate pools, separate accounts, or other plans or arrangements considered appropriate for separate members or groups of members.

(9) Operate and administer any combination of plans, pools, or other mechanisms considered appropriate to best accomplish the fair and equitable operation of the association.

(10) Appoint from among members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the association, policy and other contract design, and any other function within the authority of the association.

(11) Hire an independent consultant.

(12) Develop a method of advising applicants of the availability of other coverages outside the association. ~~and may promulgate a list of health conditions the existence of which would deem an applicant eligible without demonstrating a rejection of coverage by one (1) carrier.~~

(13) Provide for the use of managed care plans for insureds, including the use of:

(A) health maintenance organizations; and

(B) preferred provider plans.

(14) Solicit bids directly from providers for coverage under this chapter.

(f) The board shall obtain an actuarial recommendation for development of an equitable methodology for determination of member assessments.

(g) Rates for coverages issued by the association may not be unreasonable in relation to the benefits provided, the risk experience, and the reasonable expenses of providing the coverage. Separate scales of premium rates based on age apply for individual risks. Premium rates must take into consideration the extra morbidity and administration expenses, if any, for risks insured in the association. The rates for a given classification may ~~not~~ be:

(1) not more than one hundred fifty percent (150%) of the average premium rate for that class charged by the five (5) carriers with the largest premium volume in the state during the preceding calendar year for an insured whose family income is less than three hundred fifty-one percent (351%) of the federal income poverty level for the same size family; and

(2) an amount equal to:

(A) not less than one hundred fifty-one percent (151%); and

1 **(B) not more than two hundred percent (200%);**
 2 **of the average premium rate for that class charged by the five**
 3 **(5) carriers with the largest premium volume in the state**
 4 **during the preceding calendar year, for an insured whose**
 5 **family income is more than three hundred fifty percent (350%)**
 6 **of the federal income poverty level for the same size family.**

7 In determining the average rate of the five (5) largest carriers, the rates
 8 charged by the carriers shall be actuarially adjusted to determine the
 9 rate that would have been charged for benefits identical to those issued
 10 by the association. All rates adopted by the association must be
 11 submitted to the commissioner for approval.

12 ~~(g)~~ **(h)** Following the close of the association's fiscal year, the
 13 association shall determine the net premiums, the expenses of
 14 administration, and the incurred losses for the year. Any net loss shall
 15 be assessed by the association to all members in proportion to their
 16 respective shares of total health insurance premiums, excluding
 17 premiums for Medicaid contracts with the state of Indiana, received in
 18 Indiana during the calendar year (or with paid losses in the year)
 19 coinciding with or ending during the fiscal year of the association or
 20 any other equitable basis as may be provided in the plan of operation.
 21 ~~For self-insurers, health maintenance organizations, and limited service~~
 22 ~~health maintenance organizations that are members of the association,~~
 23 ~~the proportionate share of losses must be determined through the~~
 24 ~~application of an equitable formula based upon claims paid, excluding~~
 25 ~~claims for Medicaid contracts with the state of Indiana, or the value of~~
 26 ~~services provided.~~ In sharing losses, the association may abate or defer
 27 in any part the assessment of a member, if, in the opinion of the board,
 28 payment of the assessment would endanger the ability of the member
 29 to fulfill its contractual obligations. The association may also provide
 30 for interim assessments against members of the association if necessary
 31 to assure the financial capability of the association to meet the incurred
 32 or estimated claims expenses or operating expenses of the association
 33 until the association's next fiscal year is completed. **Except as**
 34 **provided in sections 12 and 13 of this chapter,** net gains, if any, must
 35 be held at interest to offset future losses or allocated to reduce future
 36 premiums. Assessments must be determined by the board members
 37 specified in subsection (b)(1), subject to final approval by the
 38 commissioner.

39 ~~(h)~~ **(i)** The association shall conduct periodic audits to assure the
 40 general accuracy of the financial data submitted to the association, and
 41 the association shall have an annual audit of its operations by an
 42 independent certified public accountant.

43 ~~(i)~~ **(j)** The association is subject to examination by the department of
 44 insurance under IC 27-1-3.1. The board of directors shall submit, not
 45 later than March 30 of each year, a financial report for the preceding
 46 calendar year in a form approved by the commissioner.

47 ~~(j)~~ **(k)** All policy forms issued by the association must conform in
 48 substance to prototype forms developed by the association, must in all
 49 other respects conform to the requirements of this chapter, and must be
 50 filed with and approved by the commissioner before their use.

51 ~~(k)~~ **(l)** The association may not issue an association policy to any

individual who, on the effective date of the coverage applied for, does not meet the eligibility requirements of section 5.1 of this chapter.

~~(h) The association shall pay an agent's referral fee of twenty-five dollars (\$25) to each insurance agent who refers an applicant to the association if that applicant is accepted.~~

(m) The association and the premium collected by the association shall be exempt from the premium tax, the adjusted gross income tax, or any combination of these upon revenues or income that may be imposed by the state.

(n) Members who after July 1, 1983, during any calendar year, have paid one (1) or more assessments levied under this chapter may either:

(1) take a credit against premium taxes, adjusted gross income taxes, or any combination of these, or similar taxes upon revenues or income of member insurers that may be imposed by the state, up to the amount of the taxes due for each calendar year in which the assessments were paid and for succeeding years until the aggregate of those assessments have been offset by either credits against those taxes or refunds from the association; or

(2) any member insurer may include in the rates for premiums charged for insurance policies to which this chapter applies amounts sufficient to recoup a sum equal to the amounts paid to the association by the member less any amounts returned to the member insurer by the association, and the rates shall not be deemed excessive by virtue of including an amount reasonably calculated to recoup assessments paid by the member.

(o) The association shall provide for the option of monthly collection of premiums.

SECTION 5. IC 27-8-10-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 3.5. (a) The association shall:**

(1) approve and implement chronic disease management and pharmaceutical management programs based on:

(A) an analysis of the highest cost health care services covered under association policies;

(B) a review of chronic disease management and pharmaceutical management programs used in populations similar to insureds; and

(C) a determination of the chronic disease management and pharmaceutical management programs expected to best improve health outcomes in a cost effective manner;

(2) consider recommendations of the drug utilization review board established by IC 12-15-35-19 concerning chronic disease management and pharmaceutical management programs;

(3) when practicable, coordinate programs adopted under this section with comparable programs implemented by the state; and

(4) implement a copayment structure for prescription drugs covered under an association policy.

(b) A program approved and implemented under this section may not require prior authorization for a prescription drug that is

prescribed for the treatment of:

(1) human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS) and is included on the AIDS drug assistance program formulary adopted by the state department of health under the federal Ryan White CARE Act (42 U.S.C. 300ff et seq.); or

(2) hemophilia according to recommendations of the:

(A) Advisory Committee on Blood Safety and Availability of the United States Department of Health and Human Services; or

(B) Medical and Scientific Advisory Council of the National Hemophilia Foundation.

(c) The copayment structure implemented under subsection (a) must be based on an annual actuarial analysis.

(d) A disease management program for which federal funding is available is considered to be approved by the association under this section.

(e) An insured who has a chronic disease for which at least one (1) chronic disease management program is approved under this section shall participate in an approved chronic disease management program for the chronic disease as a condition of coverage of treatment for the chronic disease under an association policy.

SECTION 6. IC 27-8-10-3.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3.6. (a) The association shall approve a mail order or Internet based pharmacy (as defined in IC 25-26-18-1) through which an insured may obtain prescription drugs covered under an association policy.

(b) A prescription drug that is covered under an association policy is covered if the prescription drug is obtained from:

(1) a pharmacy approved under subsection (a); or

(2) a pharmacy that:

(A) is not approved under subsection (a); and

(B) agrees to sell the prescription drug at the same price as a pharmacy approved under subsection (a).

(c) A prescription drug that is:

(1) covered under an association policy; and

(2) obtained from a pharmacy not described in subsection (b); is covered for an amount equal to the price at which a pharmacy described in subsection (b) will sell the prescription drug, with the remainder of the charge for the prescription drug to be paid by the insured.

SECTION 7. IC 27-8-10-5.1, AS AMENDED BY P.L.233-1999, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5.1. (a) A person is not eligible for an association policy if the person is eligible for Medicaid. A person other than a federally eligible individual may not apply for an association policy unless the person has applied for Medicaid not more than sixty (60) days before applying for the association policy.

(b) Except as provided in ~~subsections (b), and~~ **subsection (c)**, a person is not eligible for an association policy if, at the effective date of coverage, the person has or is eligible for coverage under any insurance plan that equals or exceeds the minimum requirements for accident and sickness insurance policies issued in Indiana as set forth in IC 27. Coverage under any association policy is in excess of, and may not duplicate, coverage under any other form of health insurance.

~~(b)~~ **(c)** Except as provided in IC 27-13-16-4 **and subsection (a)**, a person is eligible for an association policy upon a showing that:

- (1) the person has been rejected by one (1) carrier for coverage under any insurance plan that equals or exceeds the minimum requirements for accident and sickness insurance policies issued in Indiana, as set forth in IC 27, without material underwriting restrictions;
- (2) an insurer has refused to issue insurance except at a rate exceeding the association plan rate; or
- (3) the person is a federally eligible individual.

For the purposes of this subsection, eligibility for Medicare coverage does not disqualify a person who is less than sixty-five (65) years of age from eligibility for an association policy.

~~(c)~~ The board of directors may establish procedures that would permit:

- ~~(1)~~ an association policy to be issued to persons who are covered by a group insurance arrangement when that person or a dependent's health condition is such that the group's coverage is in jeopardy of termination or material rate increases because of that person's or dependent's medical claims experience; and
- ~~(2)~~ an association policy to be issued without any limitation on preexisting conditions to a person who is covered by a health insurance arrangement when that person's coverage is scheduled to terminate for any reason beyond the person's control.

(d) Coverage under an association policy terminates as follows:

- (1) On the first date on which an insured is no longer a resident of Indiana.**
- (2) On the date on which an insured requests cancellation of the association policy.**
- (3) On the date of the death of an insured.**
- (4) At the end of the policy period for which the premium has been paid.**
- (5) On the first date on which the insured no longer meets the eligibility requirements under this section.**

~~(d)~~ **(e)** An association policy must provide that coverage of a dependent unmarried child terminates when the child becomes nineteen (19) years of age (or twenty-five (25) years of age if the child is enrolled full-time in an accredited educational institution). The policy must also provide in substance that attainment of the limiting age does not operate to terminate a dependent unmarried child's coverage while the dependent is and continues to be both:

- (1) incapable of self-sustaining employment by reason of mental retardation or mental or physical disability; and
- (2) chiefly dependent upon the person in whose name the contract

is issued for support and maintenance.

However, proof of such incapacity and dependency must be furnished to the carrier within one hundred twenty (120) days of the child's attainment of the limiting age, and subsequently as may be required by the carrier, but not more frequently than annually after the two (2) year period following the child's attainment of the limiting age.

~~(e)~~ **(f)** An association policy that provides coverage for a family member of the person in whose name the contract is issued must, as to the family member's coverage, also provide that the health insurance benefits applicable for children are payable with respect to a newly born child of the person in whose name the contract is issued from the moment of birth. The coverage for newly born children must consist of coverage of injury or illness, including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities. If payment of a specific premium is required to provide coverage for the child, the contract may require that notification of the birth of a child and payment of the required premium must be furnished to the carrier within thirty-one (31) days after the date of birth in order to have the coverage continued beyond the thirty-one (31) day period.

~~(f)~~ **(g)** Except as provided in subsection ~~(g)~~; **(h)**, an association policy may contain provisions under which coverage is excluded during a period of three (3) months following the effective date of coverage as to a given covered individual for preexisting conditions, as long as medical advice or treatment was recommended or received within a period of three (3) months before the effective date of coverage. This subsection may not be construed to prohibit preexisting condition provisions in an insurance policy that are more favorable to the insured.

~~(g)~~ **(h)** If a person applies for an association policy within six (6) months after termination of the person's coverage under a health insurance arrangement and the person meets the eligibility requirements of subsection ~~(b)~~; **(c)**, then an association policy may not contain provisions under which:

(1) coverage as to a given individual is delayed to a date after the effective date or excluded from the policy; or

(2) coverage as to a given condition is denied;

on the basis of a preexisting health condition. This subsection may not be construed to prohibit preexisting condition provisions in an insurance policy that are more favorable to the insured.

~~(h)~~ **(i)** For purposes of this section, coverage under a health insurance arrangement includes, but is not limited to, coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985.

SECTION 8. IC 27-8-10-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) An association policy offered under this chapter must contain provisions under which the association is obligated to renew the contract until:

(1) the date on which coverage terminates under section 5.1 of this chapter; or

(2) the day on which the individual in whose name the contract is issued first becomes eligible for Medicare coverage, except that in a family policy covering both husband and wife, the age of the younger spouse must be used as the basis for meeting the

1 durational requirement of this ~~subsection~~ **subdivision**.

2 (b) The association may not change the rates for association policies
3 or Medicare supplement policies except on a class basis with a clear
4 disclosure in the policy of the association's right to do so.

5 (c) An association policy offered under this chapter must provide that
6 upon the death of the individual in whose name the contract is issued,
7 every other individual then covered under the contract may elect,
8 within a period specified in the contract, to continue coverage under
9 the same or a different contract until such time as he would have
10 ceased to be entitled to coverage had the individual in whose name the
11 contract was issued lived.

12 SECTION 9. IC 27-8-10-12 IS ADDED TO THE INDIANA CODE
13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2003]: **Sec. 12. (a) As used in this section, "office" refers to the**
15 **office of Medicaid policy and planning established by IC 12-8-6-1.**

16 **(b) As used in this section, "provider" means an individual, a**
17 **partnership, a corporation, or a governmental entity that is**
18 **enrolled in the Medicaid program under rules adopted under**
19 **IC 4-22-2 by the office.**

20 **(c) The association and the office shall jointly consider the use of**
21 **all or a part of:**

22 **(1) assessments made under this chapter; or**

23 **(2) funds, if any, realized by the state due to a reduction in tax**
24 **credits taken under this chapter;**

25 **as the nonfederal share of payments under a payment program**
26 **described in subsection (d).**

27 **(d) In conjunction with the joint efforts described in subsection**
28 **(c), the association and the office shall consider and, if feasible,**
29 **develop Medicaid payment programs that, using funding described**
30 **in subsection (c):**

31 **(1) provide Medicaid add-on payments to providers or**
32 **affiliated entities of providers on the basis of the provider's**
33 **provision of care to individuals covered under an association**
34 **policy; or**

35 **(2) to the extent not prohibited by applicable federal Medicaid**
36 **law, condition a provider's Medicaid payment on the**
37 **provider's remittance of funds to the association or another**
38 **nongovernmental entity established to fund care to individuals**
39 **covered under an association policy.**

40 **(e) If mutually agreed, the association and the office may**
41 **implement a payment program developed under subsection (d)**
42 **following approval of a Medicaid state plan amendment by the**
43 **federal Centers for Medicare and Medicaid Services.**

44 **(f) If:**

45 **(1) federal financial participation is disallowed by the federal**
46 **Centers for Medicare and Medicaid Services for the funds used**
47 **as the non-federal share of a Medicaid payment made under a**
48 **program developed under this section; and**

49 **(2) the office is required to pay to the federal Centers for**
50 **Medicare and Medicaid Services a refund of the federal**
51 **financial participation described in subdivision (1);**

the provider receiving the Medicaid payment described in subdivision (1) shall refund to the office the federal financial participation described in subdivision (2) not less than five (5) business days before the date that the office's payment described in subdivision (2) is required to be made to the federal Centers for Medicare and Medicaid services. The elections under IC 12-15-13-3(b) do not apply to a notice directing a provider to pay a refund required of the provider under this subsection.

(g) Notwithstanding section 3 of this chapter, subject to applicable federal Medicaid requirements, the rate of provider reimbursement for a health care service following implementation of a payment program under this section must be an amount determined by the association, according to standards and criteria relied upon by the association, to be equal to the greater of the:

(1) Medicare reimbursement rate for the health care service plus ten percent (10%); or

(2) lowest prevailing rate of reimbursement for the health care service in Indiana under a commercial health insurance policy.

(h) Notwithstanding section 2.1(h) of this chapter, if a payment program is implemented under this section, the board shall determine member assessments in an amount sufficient to ensure a net gain and distributions provided for under section 13 of this chapter.

(i) Assessments made under this chapter may be adjusted by the board to ensure that the assessments are not impermissible health care related taxes under 42 U.S.C. 1396b(w), as amended.

SECTION 10. IC 27-8-10-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) This section applies beginning in the calendar year immediately following the calendar year during which a program described in section 12 of this chapter is implemented.

(b) As used in this section, "net gain" means any funds retained by the association and a nongovernmental entity described in section 12(d)(2) of this chapter after all expenses are paid.

(c) If the association experiences a net gain in any calendar year, a member that:

(1) is a nonprofit entity not subject to taxation described in section 2.1(n) of this chapter; and

(2) paid an assessment under this chapter during the calendar year in which the net gain occurred;

is eligible to receive a distribution from the association during the immediately succeeding calendar year.

(d) The amount of a distribution to an eligible member under subsection (c) is equal to the eligible member's proportionate share of the net gain not to exceed fifty percent (50%) of the amount of the assessment the member paid during the calendar year in which the net gain occurred.

(e) An eligible member may submit a claim for a distribution under this section in the manner and form specified by the association.

(f) After distributions are made to eligible members under

subsection (c), any remaining net gain shall be distributed as follows:

(1) Forty percent (40%) must be distributed to the office of Medicaid policy and planning established by IC 12-8-6-1.

(2) Forty percent (40%) must be distributed to members according to each member's proportionate share of the total assessment amount paid by the members that has not been offset by:

(A) credits against taxes or refunds from the association under section 2.1(n) of this chapter; or

(B) distributions under subsection (c).

(3) Ten percent (10%) must be held in reserve by the association to assist in funding payments to providers.

(4) Ten percent (10%) must be allocated by the association to reduce premiums.

(f) The association shall make distributions under this section according to written guidelines established by the association.

SECTION 11. IC 27-8-10-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) Notwithstanding section 2.1 of this chapter, for the period beginning July 1, 2003, and ending March 15, 2004:

(1) fifty percent (50%) of any net loss determined under section 2.1(g) of this chapter shall be assessed by the association to all members in proportion to their respective shares of total health insurance premiums, excluding premiums for Medicaid contracts with the state, received in Indiana during the calendar year (or with paid losses in the year) coinciding with or ending during the fiscal year of the association; and

(2) fifty percent (50%) of any net loss determined under section 2.1(g) of this chapter shall be assessed by the association to all members in proportion to their respective shares of the number of individuals in Indiana who are covered under health insurance provided by a member, excluding individuals who are covered under Medicaid contracts with the state during the calendar year coinciding with or ending during the fiscal year of the association.

(b) This section expires March 15, 2004.

SECTION 12. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "association" refers to the comprehensive health insurance association established under IC 27-8-10-2.1.

(b) The office of Medicaid policy and planning established by IC 12-8-6-1 and the association shall cooperatively investigate methods of decreasing association costs related to coverage of individuals diagnosed with hemophilia, including the potential for a demonstration waiver under Section 1115 of the federal Social Security Act.

(c) The office and the association shall, not later than December 31, 2003, compile the results of the investigation required under subsection (b) and report to the legislative council.

(d) This SECTION expires June 30, 2004.

SECTION 13. [EFFECTIVE JULY 1, 2003] (a) Notwithstanding

1 **IC 27-8-10-3, the amount of reimbursement for a health care**
2 **service covered under an Indiana comprehensive health insurance**
3 **association policy is the amount of reimbursement for the same**
4 **health care service under Medicare plus ten percent (10%) until**
5 **the earlier of:**

6 **(1) the date that a payment program is implemented under**
7 **IC 27-8-10-12, as added by this act; or**

8 **(2) March 15, 2004.**

9 **(b) If the amount of reimbursement for health care services**
10 **covered under an Indiana comprehensive health insurance**
11 **association policy is specified under a contract with a health care**
12 **provider, this SECTION applies to a contract specifying the**
13 **amount of reimbursement for health care services that is entered**
14 **into, delivered, amended, or renewed after June 30, 2003.**

15 **(c) This SECTION expires June 30, 2004.**

16 **SECTION 14. [EFFECTIVE JULY 1, 2003] IC 27-8-10-3.5 and**
17 **IC 27-8-10-3.6, both as added by this act, and IC 27-8-10-2.1,**
18 **IC 27-8-10-5.1, and IC 27-8-10-6, all as amended by this act, apply**
19 **to an association policy that is issued, delivered, amended, or**
20 **renewed after June 30, 2003.**

21 **SECTION 15. An emergency is declared for this act.**

(Reference is to EHB 462 as reprinted April 10, 2003.)

Conference Committee Report
on
Engrossed House Bill 1749

Signed by:

Representative Fry
Chairperson

Senator Miller

Representative Ripley

Senator Lanane

House Conferees

Senate Conferees